



901 New York Avenue, N.W.
Suite 900 East
Washington, DC 20001

Telephone (202) 783-6040
Facsimile (202) 783-6031
www.rothwellfigg.com
info@rothwellfigg.com

Offices in Washington, D.C. | New York | Boston

May 12, 2025

VIA ECF

Hon. Ona T. Wang
United States Magistrate Judge
Southern District of New York

G. Franklin Rothwell
(1928-2011)
Harry F. Manbeck, Jr.
(1926-2025)

E. Anthony Figg
George R. Repper
Steven Lieberman
Joseph A. Hynds
Martin M. Zoltick
R. Danny Huntington
Joo Mee Kim
Brian S. Rosenbloom
Jennifer P. Nock
Brett A. Postal
Aydin H. Harston, Ph.D.
Richard Wydeven
Sharon L. Davis
Robert P. Parker
Jenny L. Colgate
Leo M. Loughlin
Michael V. Battaglia
Michael H. Jones
Rachel M. Echols
Daniel L. Shores

*Not a member of the D.C.
Bar. Practice limited to patent,
trademark and copyright matters
and cases in federal courts.

Jennifer B. Maisel
Jess M. Collen
Jeffrey A. Lindenbaum*
Mark T. Rawls
Nicole M. DeAbrantes
Davide F. Schiavetti
Vivian Y. Tian
Kristen J. Logan
Sheena X. Wang
Gary J. Prato
James T. Pawlowski
Bryan B. Thompson
Melissa C. Santos, Ph.D.
Andrew C. Stewart
Adam M. Nicolais
Gregory S. DeLassus
Michael P. Ellenberger
Mary L. Mullins*
Michael A. Saunders
Stephanie E. Waltersdorff

Of Counsel
Jane F. Collen
James R. Hastings*
Mitchell E. Radin*

Re: *In Re: OpenAI, Inc., Copyright Infringement*
Litigation, No. 1:25-md-3143, This Document Relates to: *The New York Times*
Company v. Microsoft Corporation, et al., No. 1:23-cv-11195

Dear Magistrate Judge Wang:

We write on behalf of Plaintiffs Daily News, LP, *et al.* (the “Daily News Plaintiffs”), The New York Times Company (“The Times”), and the Center for Investigative Reporting (collectively, the “News Plaintiffs”). Based on information recently produced by OpenAI, News Plaintiffs request that a discovery hearing be rescheduled as soon as possible to hear argument on The Times’s and Daily News Plaintiffs’ letter motion to compel OpenAI to identify the output logs it has destroyed since The Times filed its Original Complaint on December 27, 2023 (Dkt. [483](#)).¹

Specifically, in response to this Court’s order directing Defendants to respond to News Plaintiffs by March 31, 2025 (Dkt. [484](#)), OpenAI served a letter stating the volume of ChatGPT Free, Pro, and Plus “user conversations” it has destroyed since December 27, 2023. That letter is attached hereto as Exhibit A. As reflected in that letter, the volume of destroyed user conversations for these products is substantial: over [REDACTED] user conversations.² On April 11, 2025, OpenAI also produced to News Plaintiffs over 3 terabytes of metadata reflecting the volume of user conversations OpenAI had (as of that date) in its possession for ChatGPT Free, Pro, and Plus from

¹ This motion in turn relates to News Plaintiffs’ prior motion to compel at Dkt. [379](#). Unless otherwise indicated, all docket references herein are to *The Times* Dkt., Case No. 23-cv-11195. In response to Judge Stein’s Case Management Order No. 1 issued April 30, 2025 (*In re. OpenAI, Inc., Copyright Infringement Litigation*, Case No. 1:25-md-3143 at Dkt. 14), News Plaintiffs again asked OpenAI to “immediately cease its ongoing destruction of potentially relevant output log data and preserve all such data hereinafter,” and OpenAI declined to confirm that it was ceasing its ongoing output log data destruction practices. See Exhibit B.

² News Plaintiffs have provisionally redacted this number in the public filing because, in preparing the Parties’ joint letter containing a summary of discovery disputes to be heard at the April 10, 2025 discovery conference—which has since been adjourned *sine die* (Dkt. [519](#))—OpenAI designated this number confidential. News Plaintiffs do not agree with OpenAI’s designation.



May 12, 2025

Page 2

December 9, 2022 until December 19, 2024. When the “destroyed” and “retained” user conversation data is viewed together, the following three facts are apparent:

- *First*, in the immediate months after The Times filed its initial Complaint in December 2023, OpenAI had been destroying [REDACTED] of all user conversation data for its ChatGPT Free, Plus, and Pro products.³
- *Second*, a few weeks before OpenAI sent its November 15, 2024, letter putting News Plaintiffs on notice for the first time that it was not preserving user conversation data (Dkt. 379-13)—[REDACTED] user conversations.
- *Third*, in January 2025—just after News Plaintiffs sought to confirm for a second time that OpenAI was preserving all relevant user conversations (*see* Dkt. 379-14)⁴ [REDACTED]

The chart below overlays the user conversation data OpenAI has retained (in navy blue), the user conversation data OpenAI has retained (in pink), and annotations for the three points in time referenced above (in red).

³ OpenAI has not provided data on the user conversation data it destroyed prior to December 27, 2023, the date The Times filed its lawsuit.

⁴ The Times first sent a letter to OpenAI on January 23, 2024, stating that “OpenAI is obligated to preserve OpenAI is obligated to preserve all documents related to ... output generated by the Models, including output that repeats or summarizes training material or contains hallucinations or misinformation ... [and] use of The Times’s content for retrieval augmented generation...” (Dkt. 379-2 at 3), and the parties’ subsequent correspondence is summarized in News Plaintiffs’ earlier motion (Dkt. 379 at 2).



ROTHWELL FIGG

May 12, 2025

Page 3

See Exhibit C, Declaration of Lillian Dai.

Furthermore, OpenAI has refused to provide News Plaintiffs with the volume of output log data OpenAI has destroyed (or retained) for its other products at issue in the litigation, including the API and ChatGPT Enterprise products. On April 2, News Plaintiffs sent a follow up letter to OpenAI's March 31 letter and still have not received a response. *See* Exhibit D.

In view of OpenAI's substantial, ongoing destruction of user conversation data for at least ChatGPT Free, Plus, and Pro, and OpenAI's refusal to cease its destruction practices, News Plaintiffs request a hearing on this issue to ensure that relevant and responsive information to News Plaintiffs' claims is preserved.

May 12, 2025

Respectfully submitted,

/s/ Steven Lieberman

Steven Lieberman

Rothwell, Figg, Ernst & Manbeck, P.C.

/s/ Ian B. Crosby

Ian B. Crosby

Susman Godfrey L.L.P.

/s/ Matt Topic

Matt Topic

Loevy & Loevy

CC: All Counsel of Record (via ECF)